

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2010-27-T**

IN RE: )  
)  
)  
Application of Share Care Transport, )  
Incorporated for a Class C (Non- )  
Emergency ) Certificate of Public )  
Convenience and Necessity for Operation )  
of Motor Vehicle Carrier )  
\_\_\_\_\_ )

**ORDER DENYING APPLICATION FOR CLASS C (NON-EMERGENCY)  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR OPERATION  
OF MOTOR VEHICLE CARRIER**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition to Intervene filed by Pee Dee Regional Transportation Authority (“PDRTA”). The Petition requests that the Commission deny the Application of Share Care Transport, Inc. (“Share Care”) for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity. For the reasons set forth below, the Commission denies the Application of Share Care for a Certificate of Public Convenience and Necessity.

**BACKGROUND**

In its January 11, 2010 application seeking a Class C (Non-Emergency) Certificate of Public Convenience and Necessity, Share Care sought statewide authority to transport PC&N Passengers (Non-Emergency Vehicles), as defined in 26 S.C. Code Ann. Regs. § 103-133(6). Share Care amended its Application on January 21, 2010, to limit its service to the following

counties: Charleston, Georgetown, Williamsburg, Berkeley, Marion, and Dillon. For financial reasons, Share Care requested that the Commission expedite the application/hearing process.

### **PDRTA PETITION TO INTERVENE**

In its Petition to Intervene, PDRTA acknowledged that it is exempt from Public Service Commission jurisdiction pursuant to South Carolina Code Ann. § 58-5-30 et seq. Nevertheless, PDRTA opposed Share Care's Application for Class C (Non-Emergency) Certificate on the grounds that the public convenience and necessity is already being served in the area identified by Share Care in its Amended Application for Certificate of Public Convenience and Necessity. Further, PDRTA challenged Share Care's Application on the grounds that it did not contain ample information that was determinative of the Applicant's fitness, ability, and willingness to operate Non-Emergency Vehicles, as prescribed in South Carolina Code Ann. Regs. § 103-133(4) and § 103-133(6).

### **ISSUES**

1. Whether PDRTA may intervene in an Application to the Public Service Commission for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity?
2. Whether the Public Convenience and Necessity is currently being served in Applicant Share Care's proposed service area?
3. Whether Applicant Share Care is Fit, Willing, and Able to provide the requested service to the public under South Carolina Code Ann. Regs. § 103-133(6)?

### **APPLICABLE LAW**

**S.C. Code Ann. § 58-23-210. Classes of certificates; application and hearing. ARTICLE 3. ISSUANCE AND REVOCATION OF CERTIFICATES.**

The Office of Regulatory Staff, upon order of the commission, may issue six classes of certificates as are mentioned in Section 58-23-40 after application therefor has been made in writing by the

owner of the vehicles upon blanks provided by the commission and after such hearing as the commission may consider proper. The commission must hear any objections by any person or corporation who may be affected by the issuance of a certificate by the Office of Regulatory Staff. The six classes of certificates shall be respectively designated certificate A, certificate B, certificate C, certificate D, certificate E, and certificate F.

**S.C. Code Ann. § 58-25-50. Powers and duties of [Regional Transportation] authority.**

The authority may:

- (b) Contract for public transportation services;
- (f) Sue and be sued, implead and be impleaded, complain, and defend in all courts;

**S.C. Code Ann. Regs. § 103-102. Definitions of Terms.**

**3. Certificate of PC&N.** “Certificate of PC&N” means the certificate of public convenience and necessity authorized to be issued under the provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household good carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

**11. Corporation.** “Corporation” means a corporation, company, association, or joint stock association.

**20. Non-Emergency Vehicle.** “Non-Emergency Vehicle” means a vehicle that is used for providing, for a fee or charge, non-emergency transportation, for patients in stable medical condition. “Non-Emergency Vehicle” includes “Wheelchair Van” but not taxicabs. “Non Emergency Vehicle” shall not include vehicles owned by facilities that provide such transportation as described above without charging a separate fee for the transportation service.

**22. Person.** “Person” means any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

**S.C. Code Ann. Regs. § 103-133. Proof Required to Justify Approving an Application.**

Applications cannot be amended within forty-eight (48) hours of a scheduled hearing, unless leave to amend the application is granted by the commission.

4. PC&N (Passengers). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of passengers by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an intervenor shows or if the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

a. FIT. The applicant must demonstrate or the commission determines that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant and that applicant is financially fit to do business as a certified carrier. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agree to operate in compliance with these statutes and regulations.

b. ABLE. The applicant should demonstrate that he has purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the commission's insurance requirements and the costs associated therewith.

c. WILLING. Having met the requirements as to "fit and able", the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought. The applicant must demonstrate a willingness to comply with all commission regulations.

#### **S.C. Code Ann. Regs. §103-134. When Hearing May Be Held.**

When an application for a Certificate of PC&N is submitted and there is no opposition, the commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether the public convenience and necessity are already being served. When an application for a Certificate of FWA is submitted and there is no opposition, a hearing may be held if necessary, but the

issue of whether the public convenience and necessity is already being served shall not be considered.

**49 C.F.R § 604.1(a)(2008). Purpose.**

The purpose of this part is to implement 49 U.S.C. 5323(d), which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws.

**49 C.F.R 604.2(e)(2008). Applicability.**

The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

**49 C.F.R. 604.3(q)(2008). Definitions.**

*“Qualified human service organization”* means an organization that serves persons who qualify for human service or transportation related programs or services due to disability, income, or advanced age. This term is used consistent with the President’s Executive Order on Human Service Transportation Coordination (February 24, 2004).

**49 C.F.R. 604.3(r)(2008). Definitions.**

*“Recipient”* means an agency or entity that receives Federal financial assistance, either directly or indirectly, including subrecipients, under Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

**49 C.F.R. 604.7(a)(2008). Qualified human service organizations.**

*Qualified human service organizations.* A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of service persons: (1) With mobility limitations related to advanced age; (2) With disabilities; or (3) With low income.

**DISCUSSION**

The first hearing on Share Care’s Application was held on February 25, 2010, at 10:30 a.m. before the Honorable Elizabeth B. Fleming pursuant to S.C. Code Ann. Regs. § 103-134.

Jeffrey M. Nelson, Esq. appeared on behalf of the Office of Regulatory Staff (“ORS”). This hearing included oral argument from the Applicant’s attorney, Jack Pringle, and Intervenor PDRTA’s attorney, Carrie Fox on the issue of whether PDRTA could intervene in the Application of Share Care Transport, Inc. for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity for Operation of Motor Vehicle Carrier. Additionally testimony was taken from Carla Wessells-Ackley, a consultant for Share Care, and Officer John Teeter of the Office of Regulatory Staff. Due to a scheduling conflict, the hearing was reconvened on March 2, 2010 before the Honorable Elizabeth B. Fleming to receive additional testimony from Ms. Wessells-Ackley and Henry Sherald, President of Share Care. Jeffrey M. Nelson, Esq. appeared for ORS, Jack Pringle, Esq. appeared for Share Care, and Carrie Fox, Esq. appeared for PDRTA on March 2<sup>nd</sup>. Janice Baroody testified at the second hearing on behalf of PDRTA.

#### **I. PDRTA Intervention**

PDRTA filed a Petition to Intervene in the Application of Share Care Transport, Inc. on or about February 5, 2010, alleging that (1) the Public Convenience and Necessity were currently being served in Share Care’s proposed service area, and that (2) Share Care had not demonstrated that it was Fit, Willing, and Able to provide its proposed services. Share Care objected to PDRTA’s intervenor Petition and asserted that PDRTA’s participation at the Public Service Commission was inconsistent with its unregulated and public status. The Commission heard oral argument from both parties’ attorneys regarding the threshold issue of PDRTA’s standing on February 25, 2010.

In oral argument, Share Care argued that PDRTA, a statutory entity not subject to regulation by the Commission, should be denied the ability to oppose competing providers, as PDRTA should not benefit from PSC Regulation when it is not subject to PSC regulatory

oversight. Share Care cited 49 C.F.R § 604.1(a)(2008) which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws. Share Care also argued that PDRTA, a public transportation provider, did not compete with private providers for the same services nor did it compete in all counties of Share Care's proposed service area.

In response, PDRTA acknowledged that the Commission had no regulatory oversight over regional transportation authorities; however, PDRTA referred the Commission to S.C. Code Ann. 58-23-210, which states in part that "The commission must hear any objections by any person or corporation who may be affected by the issuance of a certificate by the Office of Regulatory Staff." Both sides argued as to whether PDRTA qualified as a "person" or "corporation" under the statute. PDRTA noted that it is highly regulated by the FTA and SCDOT, whose standards meet or exceed the Commission's regulations for non-emergency medical transportation (NEMT). Further, PDRTA asserted that it served the public, and as such was present to contest the public convenience and necessity of Share Care's proposed Class C (non emergency) Certificate.

PDRTA also cited S.C. Code Ann. §58-25-50, which gives PDRTA the authority to contract for public transportation services, (including NEMT). PDRTA indicated its primary operations for NEMT were in Chesterfield, Marlboro, Marion, Dillon, Darlington, and Florence; but that prior to the Medicaid brokerage system, PDRTA provided NEMT to 22 counties. PDRTA argued that it serves the same NEMT riders that Share Care propose to serve and thus it would be affected the issuance of a certificate by the Office of Regulatory Staff. PDRTA also provided the Commission with a copy of 49 C.F.R § 604, and drew the Commission's attention to sections allowing public transit agencies like PDRTA to receive federal funds and provide

NEMT to persons who qualify for transportation service due to disability, income, or advanced age.

## **II. Public Convenience and Necessity**

Janice Baroody, Executive Director of PDRTA, testified regarding the types of transportation services [fixed route and paratransit (including NEMT)] provided by PDRTA in six counties, including Florence, Marlboro, Marion, Darlington, Dillon, and Chesterfield. Ms. Baroody discussed NEMT services provided by PDRTA currently and over the last twenty-five years, including the advent of the Medicaid brokerage system. She testified regarding her knowledge of private providers currently certified by the Public Service Commission to provide NEMT in Marion and Dillon Counties; however, Ms. Baroody was unable to testify regarding equivalent providers in Charleston, Georgetown, Williamsburg or Berkeley Counties, other than to indicate that all named counties have an operating regional transportation authority. Ms. Baroody commented on the federal regulation and Executive Order of President George W. Bush encouraging public transportation systems to provide services to persons with mobility limitations related to advanced age, disabilities, or low income in an effort to utilize public transportation and funds to their greatest extent.

Ms. Baroody testified that PDRTA does not currently initiate NEMT services in Charleston, Georgetown, Williamsburg or Berkeley Counties (all counties listed in Share Care's Application for Class C (Non-Emergency) Certificate). However, given the extensive availability of empty seats on PDRTA vehicles, combined with the additional available capacity on existing private providers' vehicles in Marion and Dillon, Ms. Baroody opined that the public convenience and necessity were being met in these counties. Ms. Baroody testified that should the Commission allow PDRTA to intervene in Applications for Class C (Non-Emergency)



Certificate of Public Convenience and Necessity, it was her intent to petition every time a private provider proposed service in Florence, Marlboro, Marion, Darlington, Dillon, and Chesterfield counties.

Neither Henry Sherald nor Carla Wessells-Ackley offered testimony to support public convenience and necessity in any county other than Charleston. Further, neither Mr. Sherald nor Ms. Wessells-Ackley offered testimony opposing PDRTA's contention that public convenience and necessity were currently met in Marion and Dillon counties.

### **III. Fitness, Ability and Willingness**

Ms. Wessells-Ackley testified regarding her role as operations consultant for Share Care. She clarified that she is not an employee of Share Care; rather, she said that she independently manages operations to bring Share Care to a place where it operational. Ms. Ackley noted that she receives fees as a consultant with Raindancer Capital and has helped Share Care with safety and compliance issues. While she acknowledged that she has no financial interest in Share Care at all, Ms. Wessells-Ackley noted that there is very little that she has not had her hands on with regard to Share Care's application for a Class C Certificate. Ms. Wessells-Ackley said she is familiar with the certification process of NEMT, as this is the fourth NEMT with which she has consulted. Ms. Wessells-Ackley noted that in the past, she has consulted with Good Samaritan, Medicab, and L.H. Transportation. L.H. Transportation filed a protest letter related to this action, a copy of which is available in Public Service Commission Docket No. 2010-27-T; however, Ms. Wessells-Ackley testified that she was unaware of the motivation behind the protest.

Ms. Wessells-Ackley discussed that the current focus of Share Care will be to provide NEMT services to the Charleston area; however, she also discussed Share Care's future plans to

engage in NEMT services in Marion and Dillon as part of “border transportation,” as well as Share Care’s plans to operate in Williamsburg, Berkeley, and Georgetown counties. Ms. Wessells-Ackley could not comment on the names, number of vehicles, or passenger capacity of the Commission’s currently certified providers or regional transportation authorities who serve NEMT clients in any of the counties on Share Care’s application for Class C (Non-Emergency) Certificate.

Ms. Wessells-Ackley testified regarding Share Care’s proposed rates and charges for service; however, she noted that despite listing a Wheelchair Lift Fee in the application, Share Care does not have any vehicles equipped with ADA approved lift equipment. Ms. Wessells-Ackley testified that all drivers have or will have American Red Cross Standard First Aid and CPR Certificate and other required safety training pursuant to PSC Regulations. Ms. Wessells-Ackley indicated that Share Care has two forms of communications available for drivers. Ms. Wessells-Ackley also noted that all Share Care vehicles have the required safety equipment outlined in PSC Regulations and all drivers receive DOT physicals. In addition to NEMT for Medicaid Broker, Logisticare, Ms. Wessells-Ackley testified that Share Care would provide service for private pay clients, workers compensation clients, and other private contract clients.

Officer Teeter of the ORS testified regarding his inspection of Share Care and his completed “ORS Passenger Carrier Audit Report Form,” which was marked as Exhibit 1 at the hearing on February 25<sup>th</sup>. He testified that the driver files and vehicles he inspected were in compliance with the Commission’s regulations; further, Officer Teeter testified that he met with Share Care’s Manager, Ms. Wessells-Ackley regarding the PSC Non-Emergency Regulations and inspection. Officer Teeter did not offer an opinion as to whether the Certificate should be issued to the Applicant.

Mr. Henry Sherald, the President of Share Care, testified before the Commission on March 2, 2010. Mr. Sherald testified that prior to investing in Share Care, he worked for twenty five years in his family business of managing apartments and for three years as a car salesman. While Mr. Sherald's name appears as the signatory on the Share Care Application, he deferred to Ms. Wessells-Ackley regarding some issues related to the Application, including questions regarding the Balance Sheet (which as provided in the original application listed no assets other than cash, supplies on hand, and prepaids in the amount of \$50,900). Mr. Sherald testified that his responsibilities for Share Care would include keeping up with the books and working at Share Care from 9 a.m. to close; however, he was unable to articulate specific job duties when cross-examined.

Upon the Commission's examination of Mr. Sherald regarding Share Care's Balance Sheet, Share Care was given leave to amend and resubmit the same. Share Care's late filed exhibit reflects total assets in the amount of \$83,700.00, which includes motor vehicles, buildings and equipment not previously listed on the Balance Sheet.

### **CONCLUSION**

On January 22, 2010, Carla Wessells-Ackley, on behalf of Share Care, requested an expedited review by the Commission, as her client, "a disadvantaged business owner, will certainly begin to become financially distressed and his staff of six will lose their jobs" if the Application process were delayed. Further, counsel for Share Care asked that the second hearing be scheduled promptly to avoid economic loss to his client as a result of delayed proceedings. A third request to expedite the Court's Order was communicated to the Commission regarding the proposed Orders to be drafted in this matter, also referencing financial hardship. After hearing the testimony and reviewing the record in this matter, we find the following:

1. PDRTA may intervene in the Application of Share Care to the Public Service Commission for a Class C (Non-Emergency) Certificate of Public Convenience and Necessity.

The commission must hear any objections by any person or corporation who may be affected by the issuance of a certificate by the Office of Regulatory Staff. The definitions of “corporation” and “person” which appear in S.C. Code Ann. Regs. § 103-102 do not contemplate but also do not exempt statutorily created regional transportation authorities like PDRTA, from intervening in Applications for Class C (Non-Emergency) Certificates of PC&N. Further, S.C. Code Ann. §58-23-210(f) allows for regional transportation authorities like PDRTA to “sue and be sued, implead and be impleaded, complain, and defend in all courts.” The Commission finds that PDRTA is properly before the Commission as it may be affected by the issuance of a Class C (Non-Emergency) Certificate to Share Care, who proposes to provide NEMT services to areas currently served by PDRTA in the same capacity.

2. Public Convenience and Necessity is currently being served by PDRTA in Applicant Share Care’s proposed service area of Marion and Dillon counties. The commission may deny an application if an intervenor shows or if the commission determines that the public convenience and necessity is already being served. After hearing the testimony of Ms. Wessells-Ackley and Ms. Baroody regarding the availability of private providers and regional transportation authorities in Share Care’s proposed service area, the Commission finds that Share Care has not demonstrated a need for additional NEMT private providers in Marion and Dillon Counties.

3. While the Commission finds that Share Care’s submission of its Application to the Commission sufficiently demonstrates its willingness to provide the authority sought, Share Care has not demonstrated that it is Fit and Able to provide the requested service to the public under

South Carolina Code Ann. Regs. § 103-133(6). Under S.C. Code Ann. Regs. § 103-133, the burden of proof is on the Applicant to show that it is fit, willing, and able to perform the proposed services in its Application.

Mr. Sherald has certified in Share Care's Application that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agree to operate in compliance with these statutes and regulations. While Ms. Wessells-Ackley communicated to the Commission that she is familiar with and will help Share Care in its operations, she testified that she does not have a financial interest in the business and therefore her continued involvement and the extent of the same is yet to be determined. Ms. Sherald, the President of Share Care, will be responsible for running the day-to-day operations and ensuring that Share Care complies with S.C. Code Ann. § 58-23-10 et seq (1976), the amendments thereto, R.103-100 through R. 103-241 of the Commission's Rules and Regulations for Motor Carriers (Vol. 26, S.C. Code Ann. 1976), and R. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers (Vol. 23A, S.C. Code Ann., 1976) and amendments thereto.

However, beyond certifying an understanding and willingness to comply with the above referenced statutes, the Applicant must demonstrate that it is financially fit to do business as a certified carrier. At this time, it appears that Share Care has liquidity of less than \$25,000.00 with which to operate NEMT using at least four vehicles and six employees in multiple counties. At this time, none of the vehicles currently purchased or leased by Share Care are outfitted with ADA compliant wheelchair lift equipment, despite Share Core's application reflecting the intent to provide wheelchair lift service. Based upon the three separate requests by Share Care for the Commission to expedite the certification process based upon financial difficulties, the

Commission is hesitant to award a Class C (Non-Emergency) Certificate to Share Care. Because NEMT serves the indigent, the disabled, and the elderly, all extremely vulnerable individuals requiring a high level of care, the Commission denies that Share Care is Fit and able to provide NEMT services at this time.

BY ORDER OF THE COMMISSION:

/s/

Elizabeth B. Fleming, Chairman

ATTEST:

/s/

John E. Howard, Vice Chairman

(SEAL)